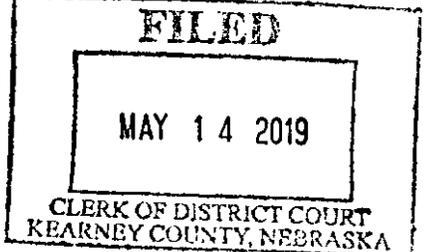


IN THE DISTRICT COURT OF KEARNEY COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
JIM MACY, Director,)
NEBRASKA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)
)
Plaintiff,)
)
v.)
)
KCC FEEDING, INC., a Nebraska)
Corporation,)
)
Defendant.)

Case No. CI 19-22

CONSENT DECREE



COMES NOW Plaintiff, Jim Macy, Director of the Nebraska Department of Environmental Quality ("NDEQ"), proceeding on the Complaint filed herein and appearing through counsel, Douglas J. Peterson, Attorney General, and Defendant KCC Feeding, Inc., a Nebraska Corporation, and each party having consented to the making and entering of this Consent Decree without trial, request entry of this Consent Decree.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court has jurisdiction over the subject-matter of this action pursuant to the Neb. Rev. Stat. § 24-302. Venue is proper pursuant to Neb. Rev. Stat. § 25-403.01, as Defendant's animal feeding operation is located in Kearney County and the events at issue took place in Kearney County.

2. In the Complaint, Plaintiff alleges Defendant discharged animal excreta from its holding pond 1B in violation of its National Pollutant Discharge Elimination System Permit and the Livestock Waste Management Act. Plaintiff alleges Defendant caused pollution to a water of the State or caused to be placed livestock waste in a place where it would likely cause pollution to water of the State and the discharge reduced the aesthetic quality of a water of the State in



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violation of the Nebraska Environmental Protection Act. Plaintiff also alleges Defendant failed to comply with the terms of its construction and operating permit in violation of the Livestock Waste Management Act and Title 130 of the Nebraska Administrative Code – *Livestock Waste Control Regulations*.

3. On July 10, 2017, Defendant and NDEQ entered into a Consent Order in *In re KCC Feeding, Inc.*, Case No. 3411. This Consent Order is hereby incorporated into this Consent Decree and is attached hereto as Exhibit 1. In Paragraph 24(B) of the Consent Order, Defendant agreed to:

Submit monthly reports to [NDEQ] for a period of two years from the date of th[e] order. The monthly report shall list the levels of Holding Ponds 1A and 1B each week and after precipitation events, the dates the pond(s) were de-watered, where the pond(s) were de-watered and the volume de-watered. The reports must be submitted by the 15th of each month for the previous month's activity.

4. The parties agree settlement of this matter is in the public interest and entry of this Consent Decree is the most appropriate means of resolving their dispute. The parties desire to conclude this case without trial or adjudication of any issues of fact or law. The parties further desire to conclude this case without this Consent Decree constituting an admission by Defendant with respect to such issues.

5. This Consent Decree will be in full satisfaction of all claims between the parties alleged in Plaintiff's Complaint.

6. IT IS THEREFORE ORDERED Defendant will pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02(2) (Reissue 2014), in the amount of twelve thousand dollars (\$12,000.00), as well as court costs in the amount of eighty-three dollars (\$83.00), to the District Court for Kearney County, Nebraska. The civil penalty will be handled as provided by Article VII, Section V, of the Nebraska Constitution.

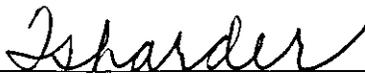
- A. Six thousand dollars (\$6,000.00) of the civil penalty, as well as court costs of eighty-three dollars (\$83.00), to be paid upon entry of the Consent Decree and payable to the Clerk of the District Court for Kearney County; and
- B. The remaining six thousand dollars (\$6,000.00) of the civil penalty shall be waived if Defendant: (i) maintains compliance with the Livestock Waste Management Act, the Nebraska Environmental Protection Act, and Title 130 of the Nebraska Administrative Code until July 10, 2019; and (ii) continues to submit monthly reports to NDEQ, as set forth in Paragraph 24(B) of the Consent Order, for the remaining length of the Consent Order, which ends July 10, 2019. NDEQ shall verify compliance with the Livestock Waste Management Act, Nebraska Environmental Protection Act, Title 130 of the Nebraska Administrative Code, and the Consent Order. If Defendant, however, does not maintain compliance or fails to submit monthly reports, as outlined in the Consent Order, then the remaining six thousand dollars (\$6,000.00) will not be waived and, instead, will be payable to the Clerk of the District Court for Kearney County.
- C. Defendant shall provide Plaintiff with a showing of compliance by July 19, 2019. The showing of compliance must indicate Defendant maintained compliance with the requirements listed in Paragraph 6(B) of this Consent Decree.
- D. Plaintiff shall file a Satisfaction of Judgment with the Court after Defendant provides its showing of compliance pursuant to Paragraph 6(C) of this Consent Decree. If Defendant, however, violates the requirements of Paragraph 6(B) of this Consent Decree during the period of compliance following entry of this Consent Decree, then Plaintiff, in its sole discretion, may file with the Court a motion to enforce the terms of the Consent Decree for payment of the remaining six thousand dollars (\$6,000.00). The determination of this waiver provision shall be stayed pending ongoing enforcement proceedings.

7. This Consent Decree will have no effect on any enforcement action brought by NDEQ against Defendant for future violations of any statutes, regulations, or permits.

8. The undersigned consent without further notice to the form and entry of this Consent Decree.

DATED this 14 day of May 2019, in Kearney County, Nebraska

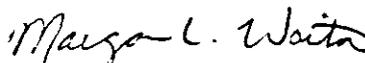
BY THE COURT:



District Judge of Kearney County, Nebraska

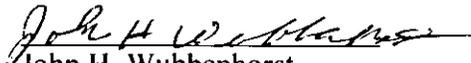
STATE OF NEBRASKA, ex rel.,
JIM MACY, Director, NEBRASKA DEPARTMENT
OF ENVIRONMENTAL QUALITY, Plaintiff

BY: Douglas J. Peterson, #18146
Attorney General

BY: 

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Attorneys for Plaintiff

KCC Feeding, Inc., Defendant

BY: 

John H. Wubbenhorst
President
KCC Feeding, Inc.

CERTIFICATE OF SERVICE

I, the undersigned, certify that on May 14, 2019 , I served a copy of the foregoing document upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or via E-mail:

Maegan L Woita
Maegan.woita@nebraska.gov

Date: May 14, 2019

BY THE COURT:

Jessie L. Fritson
CLERK

